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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/575,633	05/22/2000	William B. Johnson		1491

7590

10/15/2002

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 10/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09 575233

Applicant(s)

Johnson

Examiner

MULLey

Group Art. Unit

1616

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 7/2/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-9, 17-25 is/are pending in the application.
- Of the above claim(s) 17-25 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-9 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-9, 17-25 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Receipt is acknowledged of amendments of 7/02/02.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 17-25 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.

Newly submitted claims 17-25 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims constitute methods in accord with those of 10-16, as such are patentably distinct from 1-9; and, at best may be construed as species of methods of 17-25, but not as compositions.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 1, 3, 4, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Black--5536452.

The rejection of record is maintained.

Absent applicant's identification of a thickening agent, we see the surfactant—EDTA complex as dual function satisfying the instant claims. Applicant's recitations of

non-toxicity and safety are open to wide interpretation, absent specification of compounds, concentrations and amounts.

Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Dupis et al 6120780.

The rejection of record is maintained.

The cosmetic compositions, thus non-toxic and safe to humans, devoid of insecticides, are shown as known. Future intended use and description of mechanism of action functions are not seen as of patentable weight.

Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. "Devoid of insecticide" is not evident to examiner, in the specification; the concept is not novel; the "safe" and "non-toxic" are not further identified; these are qualitative, unquantified, terms—we do not know is non-toxic is limited acute, subacute, chronic, side effects or what. The proper limitation is "consisting of", to exclude intended insecticides. Note that applicant uses insecticides—citronella—note applicant's composition is in fact insecticidal by intention. Rejections removed will be reinstated when new matter is removed.

Applicant's arguments filed 7/3/02 have been fully considered but they are not persuasive. Applicant's arguments have been considered, and the general terminology now claimed, as supported in the specification warrants withdrawal of the 112 rejection of record, even though no specific compounds are claimed and no degrees of "toxic"

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and "safe" are defined. However, the compositions as claimed are intended to be toxic, to insects (line 1, page 4) of remarks, so the claims can not be devoid of insecticides—we must guess at what applicant intends to separate applicants from all other insecticides—Examiner has not seen fit to apply well known compositions, such as the OFF repellent of surfactants, SAFER soap, and AVON's cosmetic/repellent, because applicant has not identified in the claims any specific surfactant and thickening agent. It is unclear if applicant is claiming a novel surfactant and thickening agent that is the only one, so they should be identified, capable of interfering with undefined VITAL functions of an insect when it is coated by applying to the insect, that combination. The prior art of record is seen as meeting the instant claimed compositions.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 305-4556 for regular communications and 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy: mv
October 1, 2002

A handwritten signature in dark ink, appearing to read 'Neil S. Levy', written in a cursive style.

NEIL S. LEVY
PRIMARY EXAMINER